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Supreme Court of the United States

OCTOBER TERM, 1941.

No. 589

WILLIAM JACOB,

Petitioner,

against

THE CITY OF NEW YORK,

Respondent.

PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE SECOND CIRCUIT AND BRIEF IN SUPPORT THEREOF.

SILAS B. AXTELL,
DOMINICK BLASI,
Counsel for Petitioner.

ACKERMAN PRESS, Inc., 303 East 44th St., 'Phone VAnderbilt 6-1898

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OCTOBER TERM, 1941.

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THE CITY OF NEW YORK,

Respondent.

PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE SECOND CIRCUIT.

Petitioner, William Jacob, prays that a writ of certiorari issue to review a judgment of the United States Circuit Court of Appeals for the Second Circuit, which affirmed, in the manner hereinafter set forth, a judgment of dismissal, of the District Court for the Southern District of New York. The Circuit Court of Appeals affirmed the dismissal of the main count set forth in the complaint, which was a cause of action for damages resulting from severe personal injuries suffered on board ship. The second and minor count, a cause of action for maintenance and cure, was reversed. This petition is for a review of that part of the judgment that was affirmed.

Statement as to Jurisdiction.

The decree of the Circuit Court of Appeals was entered on the 10th day of June, 1941 (R., 74). The Court's jurisdiction to entertain and grant this petition is provided by Sec. 240 a of the Judicial Code, as amended by the Act of February 13, 1925, c. 229, Section 1, 43 Stat. 938 (28 U. S. C. A., Sec. 347 [a]).

Decisions Below.

Petitioner's action was brought under Sec. 33 of the Merchant Marine Act of 1920, Title 46, United States Code Annotated, Sec. 688 (commonly known as the Jones Act), which incorporated by reference the Railroad Employers' Liability Act, Title 45, United States Code Annotated, Secs. 51 to 59, to recover damages for personal injuries (first count), and maintenance and cure (second count). The petitioner was injured in the course of his work on respondent's ferryboat "Dongan Hills".

The case was tried in the District Court before the Honorable Isaac M. Meekins, District Judge, and a jury (petitioner having elected to proceed at law under the said Jones Act and demanded a jury trial pursuant to Rule 38 of the Rules of Civil Procedure for the District Courts of the United States), on February 29, 1940 and March 1, 1940. The Court upon petitioner resting his case entertained a motion to dismiss the complaint. The motion was granted and the complaint dismissed (R., 39 and 52). Exceptions in both instances were allowed (R., 39 and 52).

The trial Court did not hear nor did the respondent present any proof or evidence (R., 39 and 52). The trial Court disposed of the issues on the merits and the Circuit Court of Appeals rendered its decision as aforesaid on petitioner's evidence alone.

The District Court refused to have the jury pass upon the facts and to determine them, but ruled on them itself, as a matter of law (R., 39, 52).

The Circuit Court of Appeals rendered a per curiam opinion, 119 Fed. (2) 800. The Circuit Court sustained the District Court on the first count, i. e., the count for the damages for the personal injuries and reversed the count for maintenance and cure, with a direction that judgment on the latter count be entered for the amount offered by respondent in the District Court.

The entire matter was disposed of, and the Circuit Court found the facts against petitioner, holding as did the trial Court, that Jacob as a matter of law, could not have a recovery.

The Circuit Court in announcing and applying to the facts so found made a ruling as to the law, which, it is submitted was erroneous. Petitioner seeks a review of that ruling.

Questions Presented.

Stated in broad terms, the questions are:

First—Whether a shipowner may have the benefit of the so-called "simple tool doctrine", heretofore unknown to the law of the sea, and the shipowner thus relieved of liability for personal injuries suffered by a seaman injured in the course of his employment while using a worn and only appliance available, where the shipowner has failed to provide a safe and proper appliance.

Second—Contrary to the evidence the Court below stated that petitioner had available for use, a proper appliance. Assuming that be so, the further question is whether the rule of comparative negligence, rather than that of assumption of risk applies to the seaman who has made use of a defective appliance, where a safe one is available.

Socony-Vacuum v. *Smith*, 305 U. S. 424.

With specific reference to the facts involved here, the question is as follows:

Are not shipowners required to exercise a high degree of care to provide sufficient and proper appliances for use of seamen in the proper performance of their work pursuant to the Maritime Law, the Jones Act and the Railways Servants' Act (supra)? May a trial Court in a case triable by jury, deprive the seaman of his right to have the jury pass judgment on the facts, he having elected to sue at law under the Jones Act, or may the Court exercise the function of the jury to determine the issues?

The Circuit Court of Appeals has applied, as has the District Court, a rule known as the "simple tool doctrine" to a seaman's case brought under the Jones Act. It appears, and so far as known no case has been presented to this Court involving a seaman's action in which the said "simple tool doctrine" has been applied to a seaman's case under the Jones Act. The said doctrine has to petitioner's knowledge heretofore been applied exclusively to torts on land, not to cases of seamen on ships.

The questions here presented have not been answered by this Court.

It will be shown that the Circuit Court dealt with the present case as though it had the same power as Congress over the Jones Act. It incorporated into the Maritime Law a doctrine unknown to seamen, ships and shipowners.

Petitioner also brings up for review the reversible error of the trial Court in excluding custom evidence. *Standard Oil Company of New Jersey* v. *DeVries*, 3 Fed. (2d) 852; *Malbrunn* v. *Hamburg-American S. S. Co.*, 77 Fed. (2d) 304.

The writ of certiorari should be granted because the judgment is patently contrary to the Federal Statutes and the applicable decisions of this Court to seamen's cases, and the questions involved are of substantial importance for the proper administration of justice. At the present time numerous cases throughout the country are in liti-

gation, in which seamen injured aboard vessels have brought suit to recover damages for injuries suffered by them while using worn tools and improper appliances.

Statement of Facts.

Jacob was employed as a water tender, on the City of New York's ferryboat, "Dongan Hills", and was injured on the 4th day of October, 1938, while in navigable water of the United States at the Port of New York. On the date in question, as set forth in the pleadings, Mr. Jacob was changing oil strainers, when suddenly the wrench that he was using slipped, and petitioner was caused to be precipitated from and fall off a platform, striking and landing on a catwalk or grating, whereby he sustained the injuries sued for (R., 14). The process of changing the oil strainers was by taking one strainer out and putting another one in—by the head of a manifold (R., 15), this manifold being a device that contains more than one strainer. To take the strainer off it is necessary to take off six bolts. The individual performing the service was required to stand on an 18" square, stationary platform (R., 16).

The manner of the happening of the accident is briefly thus:

> "Q. What happened? A. In taking off these bolts and putting them on they have to be very tight, and I put a strain on them and the wrench slipped and I had nothing to grab and I fell and hit an angle iron" (R., 16, 17).

The wrench which was being used "was well worn." "It had seen a lot of service. It had a lot of play on it" (R., 17).

In inquiring about the wrench, the trial Court was given the following testimony (p. 18):

"The Court: Was there anything wrong with the wrench except at the end?

The Witness: It was very loose.

The Court: A loose fit?

The Witness: Yes, sir.

Q. Was there any other wrench on the boat that would fit the stud? A. Not that I know of.

Q. Did you make inquiries to get a better or another wrench? A. I did.

Q. From whom? A. The chief engineer.

Q. Did you show him the wrench you had been using? A. No. I told him the wrench I had was very bad.

Q. What did you tell him exactly? A. I told him I would like to have a new wrench.

Q. What did he say? A. He said for me to look in the tool closet and see if there was one in there; and I went up there and couldn't find any and I believe he said he sent an order out for me.

Q. How long before that, before the accident, did you report that? A. I guess two or three days before.

The Court: Had the wrench been slipping before that?

The Witness: Yes, she was.

Q. Where were the tools kept on this ship? A. In the engine room.

Q. Was there a place for them? A. There was a tool locker there.

Q. What do they call it? A. A tool locker.

. . . . . .

Q. It was just a place where tools were supposed to be put when not in use? A. Yes, sir.

Q. You looked over all they had there? A. I did.

Q. You found no end wrench? A. That is right."

This is additional testimony as to the defectiveness of the wrench (R., 22):

"Q. I want you to take this open end wrench and just show the jury, using that to illustrate with, what you say was the matter with the other wrench? A. There was play in the jaws; it was worn.

Q. And what happened? A. It slipped.

Q. When it slipped what happened to you? A. I lost my balance and went off the platform and found myself in the passageway.

Q. What did you strike against? A. An angle iron."

The plaintiff was severely injured (R., 22), and has had constant pain of his whole side, with difficulty in breathing (R., 23). Several ribs were fractured (R., 10).

Petitioner on cross examination gave the following testimony:

"Q. On this day he (chief engineer) had a whole set of tools and wrenches, didn't he? A. No.

Q. Did you look in his tools? A. I did.

Q. And you didn't find any wrenches? A. Not one to fit" (R., 29).

Proof of general custom, usage and practice, with regard to the supply of tools, wrenches, etc., was offered but the Court refused to allow it (R., 36, 37).

On motion of the respondent that petitioner failed to offer proof and to introduce evidence sufficient to constitute a cause of action (fol. 114), a motion was granted with an exception to petitioner, the Court holding that under the "simple tool doctrine" plaintiff could not succeed (fol. 116), and its authority for the ruling was the case of *Newbern* v. *Great Atlantic & Pacific Tea Company*, 68 Fed. (2d) 523 (R., 39).

The Court did not find that the petitioner gave any false testimony, nor was there any such suggestion. It was accepted as true.

The testimony given by petitioner was not contradicted. He stated that the superintendent was told that he would order another wrench but it was never done. Jacob's superior officers knew the one in use to be worn and of improper design. What was needed and should have been provided was not done.

The Circuit Court in affirming the ruling of the District Court overruled petitioner who endeavored to show that the respondent should have supplied a better and different tool.

The trial Court erred (R., 37) in refusing to permit the plaintiff to prove the difference between the type of wrench he was using and a proper one (R., 37). The trial Court should have submitted to the jury under the circumstances the issue of whether the respondent had exercised that degree of care required of it by law to furnish the employee with reasonably safe tools and equipment and a proper place to work.

The Circuit Court and the trial Court have both erroneously applied the so-called "simple tool doctrine" to a maritime tort and the former has erred in ruling "that the master has been guilty of no negligence with respect to the tool used by the employee".

Reasons for Granting the Writ.

The Circuit Court has decided an important question of Federal Law, which has not been, but should be, settled by this Court.

The importance of the question lies in the following: That the Courts below have held that a seaman may not recover damages for personal injuries suffered while using a defective or worn tool or appliance, and the shipowner

has been relieved of the responsibility of furnishing proper and suitable tools to seamen although the Railway Servants' Act makes it mandatory that the master do so; and that where a seaman has been injured in the course of his work and evidence of custom and practice is submitted to prove the necessary tools or appliances required to be furnished to the employee, that such testimony should be excluded, and lastly that although suit is brought under the Jones Act, at law with a jury trial the Court may take the issues away from the jury and decide the case itself, as a matter of law.

Respectfully submitted,

WILLIAM JACOB,
By SILAS B. AXTELL,
Attorney of Record.

Dated, New York, August 30, 1941.

I hereby certify that I have examined the foregoing petition, and in my opinion it is well founded and entitled to the favorable consideration of this Court, and that it is not filed for the purpose of delay.

SILAS B. AXTELL.

SUPREME COURT OF THE UNITED STATES,

OCTOBER TERM, 1941.

No. ____

WILLIAM JACOB, *Petitioner,*

against

THE CITY OF NEW YORK, *Respondent.*

BRIEF IN SUPPORT OF PETITION FOR CERTIORARI.

Reference has been made in the petition to the jurisdictional provisions and the proceedings and opinions below. The facts of the case are stated in the petition.

The general proposition for which the petitioner contends is that a shipowner should not be immune from liability for personal injuries suffered by a seaman in the course of his work due to a worn appliance, where the shipowner has failed to provide to the seaman a proper one; that assuming that a seaman has available for use other appliances from which he has selected a defective one, the rule of comparative negligence rather than that of assumption of risk should be applied to the seaman who is injured while making use of the defective appliance, assumption of risk and contributory negligence being excluded by the Jones Act.

The specific proposition for which the petitioner contends is that the "simple tool doctrine" heretofore applicable to land torts only, and unknown to the law of the sea is not applicable to seamen.

POINT I.

The "simple tool doctrine" is not applicable to seamen. It is a shipowner's duty to provide a seaman with a seaworthy vessel and with safe and proper appliances and tools. The Circuit Court erred in holding to the contrary.

The statute is not permissive but mandatory upon an employer to furnish proper tools and appliances (Sec. 51, Title 45, U. S. C. A., incorporated by reference in the Jones Act). It provides that every employer

> "* * * shall be liable in damages to any person suffering injury * * * resulting in whole or in part from the negligence of any of the officers, agents, or employees of such carrier, or by reason of any defect or insufficiency due to its negligence, in its * * * appliances, machinery * * * or other equipment."

A shipowner is obliged to provide its employees with a seaworthy vessel and with proper gear, appliances, equipment, devices and tools. The statute (Jones Act) applies to it as well as a carrier by rail.

> Sec. 688, Title 46, U. S. C. A. (Jones Act);
> Sec. 51, Title 46, U. S. C. A. (Railway Servants Act);
> *Panama* v. *Johnson*, 264 U. S. 375;
> *Pacific* v. *Peterson*, 278 U. S. 130;
> *Socony-Vacuum* v. *Smith*, 305 U. S. 424.

The evidence is clear and uncontradicted that the wrench was worn and defective (R., 18) and there was "not one to fit" available (R., 29).

Jacob being a seaman and entitled to the benefits of the Jones Act, should not have been deprived of his right to a jury trial. The Courts below should have applied the law applicable to this case, rather than a rule unknown or inapplicable to maritime torts.

In *The Seeandbee*, 102 Fed. (2d) 577, 1939 A. M. C. 711, the Court, at page 716 of the latter citation, ruled:

> "It is the duty of a shipowner or master to supply a seaworthy vessel for its employees and this does not depend on the exercise of reasonable care, but is absolute. *H. A. Scandrett*, 2 Cir., 1937 A. M. C. 326, 87 F. (2d) 708."

In *Zinnel* v. *Fleet Corp.*, 10 Fed. (2d) 47, 48, a dismissal in a law action in which the shipowner was charged with failure to provide a rope for decedent's safety was reversed and it was held:

> "* * * All we need, and do, hold is that under the law of master and servant, as now in force by statute, the circumstances were such as would allow the jury to find that there was no rope, and that its absence, made the intestate's place of work unsafe."

Such was the situation herein. Respondent neglected to furnish Jacob with a suitable and proper wrench, as required. Petitioner's place of work was thereby rendered unsafe.

A shipowner warrants the seaworthiness of the vessel, and is obliged to provide the seaman with safe equipment, and this is implied in and is a part of the contract of employment. That has been, and still is the law of the sea. The Jones Act gave additional remedies and increased the seaman's rights and remedies under the settled maritime law.

Rainey v. *New York and Porto Rico Steamship Co.*, 216 Fed. 449;
Storgard v. *France*, 263 Fed. 545, certiorari denied 252 U. S. 704;
Cortes v. *Bull Line*, 287 U. S. 367;
Engel v. *Davenport*, 271 U. S. 33.

In the *Rainey* v. *New York and P. R. S. S. Co.* case (supra), the rule was enunciated as follows:

> "According to the general maritime law, there was an implied warranty on the part of the shipowner that the ship in question was seaworthy at the time of beginning the voyage in question" (p. 453).

It was satisfactorily established by petitioner that a safe and suitable wrench was not on the vessel for his use. The trial Court should have submitted the issues to the jury; and the Circuit Court should have reversed the dismissal.

Crickett v. *Parry*, 263 Fed. 523, certiorari denied 252 U. S. 580;
O'Shea v. *Shipping Board*, 5 Fed. (2d) 123;
Storgard v. *France*, 263 Fed. 455;
Grimberg v. *Admiral Oriental Line*, 300 Fed. 619;
Ives v. *United States*, 68 Fed. (2d) 201;
Zinnel v. *Fleet Corporation*, 10 Fed. (2d) 47;
Stevens v. *O'Brien Co.*, 62 Fed. (2d) 632.

The cause of Jacob's injuries was respondent's failure to supply and keep the vessel equipped with sufficient and proper tools, and it was for the jury to determine the issue of negligence, not the trial Court, petitioner having duly elected to sue under the Jones Act and demanded a jury trial.

This case is no different than the numerous cases that have been decided by the Courts in which a shipowner has been held liable for failure to provide a rope, ladder, door hook, socket wrench, etc. The doctrine of simple tool is applicable to cases where an employer furnishes a tool which is defective in its manufacture or construction, such

as an improperly tempered chisel which splinters or a bolt or a water glass that breaks because of inherent defect. In such cases the courts hold and rightfully so that the employer, having made every reasonable effort to provide proper appliances, cannot be held liable for the inherent or latent defect of the instrument purchased from a reputable manufacturer, but cases are lacking in which the simple tool doctrine has been held to apply to instruments which have become worn out and no longer fit for use or which was not the correct design or kind, which should be removed from the vessel and replaced with new or better ones. The worn out wrench should have been replaced with a new, better or suitable one. Respondent had ample time to do so—"two or three days" (R., 29). The petitioner does not, and did not below, contend that the instrument furnished him was inherently defective or improperly manufactured. He contends it was worn and unfit for use. There was no chipping or breaking. The slipping was due to its age, wear and tear, and because it was the wrong kind of wrench for that purpose. The case would be no different were the petitioner to have furnished any other instrument resembling a wrench, but unfit for the purposes intended in the performance of Jacob's duties. Furthermore, Jacob had no choice of selecting a good wrench from a bad one, there having been no others available (R., 29, 33), and the rule requiring shipowners to furnish proper tools should not be relaxed. The employer should be held to the requirements to exercise due care to furnish the necessary and safe tools.

In the case of *Coast Steamship* v. *Brady*, 1925 A. M. C. 1243, cert. denied 269 U. S. 578, it appears that a seaman was allowed a recovery by reason of the defendant's failure to provide a proper wrench. The Circuit Court of Appeals for the Fifth Circuit affirmed the award because, as it observed, at page 1245:

"Witnesses for the plaintiff and defendants agree that the ordinary barrel or socket wrenches are the kind which were suitable for the work being done on the occasion of plaintiff's injury, and that there were none on board of the necessary size."

And as further stated by it, at page 1247:

"It has been held by the Supreme Court that the Merchant Marine Act is constitutional, and that the Employers' Liability Act which renders carriers by railroad liable to employees for injuries resulting by reason of *any defect or insufficiency in equipment, including appliances, was made applicable to steamships* by the Merchant Marine Act as amended. *The Alliance, Panama Railroad Co.* v. *Johnson*, 1924 A. M. C. 55, 264 U. S. 375." (Italics ours.)

In *Howarth v. Shipping Board*, 24 Fed. (2d) 374, the facts were briefly, that a door hook was broken off and a fire brick was used in its place to hold the door from which the said hook had been broken off. In reversing the judgment of dismissal and ordering the case back for a new trial, it was held (p. 376):

"It is argued that the fire brick was a safe door stop, and had worked well enough before; but a different inference may be drawn; and a jury ought to have been allowed to say whether the defendant should have maintained a hook on the door to hold it securely back, or whether the brick provided in place of the missing hook was a reasonably safe appliance, in view of the tendency of ships to pitch and roll in rough weather. The dismissal of the cause of action to recover indemnity was error. If the door without the hook was unsafe, the *acts of defendants in furnishing*

an unsafe appliance would be negligent. The Merchant Marine Act of 1920 allows recovery for negligence. 41 U. S. Stat. at Large, page 1007 (46 U. S. C. A., Sec. 688 [Comp. St., Sec. 8337a])." (Italics ours.)

In the case of *Ives* v. *United States*, 58 Fed. (2d), 201, a decree of dismissal in admiralty was reversed and a recovery allowed. Ives was engaged as a fireman on a voyage between New York and Norfolk. One of the ventilators could not be turned, and a pipe was being used in an effort to do so; it slipped off the handle, sprang back due to the fact that torsion had been exerted on the reach rod, striking appellant's eye. The Court held that:

> "With a reach rod as long as this, it should have been foreseen by the appellant's superior that the use of the pipe as described would cause a spring and incur the danger of a torsion of the rod. The leverage with the push and pull thereon would cause it. *The non-delegable duty to use due and reasonable care to make and keep the ship seaworthy, as well as her appliances, was upon the owners during the voyage.*" (Italics ours.)

In the case of *Storgard* v. *France* (supra) Judge Ward, speaking for a unanimous bench in reversing the judgment obtained by the defendant in the trial Court, stated the issue was:

> "The charge of negligence was that the owner permitted the bolt to become worn and defective, so that the vessel was unseaworthy as to him. It will not be necessary to go into particulars, because the jury found a verdict for the defendant, and the only question to be decided is whether the court erred in charging them" (p. 546).

And held (p. 547):

> "If the bolt was worn and defective, and the shipowners knew or ought to have known the fact, it makes no difference whether they as reasonable men would not have apprehended the particular accident which actually did happen. The evidence was that the sailors always used this ring on their way to the topmast. The seamen were bound to use the equipment and appliances which the owners furnished, and they were on their part bound to furnish and maintain equipment and appliances for the seamen to use, at least free from defects known or which ought to be known."

In *Helmke* v. *United States*, 8 Fed. Supp. 521, Judge Borah in an admiralty action awarded a seaman damages by reason of the shipowner's neglect in failing to maintain a chain railing reasonably safe. A dog ran between the seaman's legs and threw him off balance, and Helmke in an effort to steady himself grabbed the railing which gave way beneath his weight. In making the award, the trial Court followed the well known rule that:

> "The *respondent was obligated to provide reasonably safe equipment* for the libelant and I think it was a breach of that duty to him to fail to keep this chain railing reasonably safe for him and his fellow employees. When either through fault of the dog or otherwise the libelant lost his balance and involuntarily stumbled in the direction of and against the chain railing, he would have been uninjured except for the negligence in failing to keep the chain railing safe. There was no reason to suspect danger in allowing the dog on board ship or even in playing with him, and it was the natural and probable consequence of the negligent and wrongful failure to maintain a safe chain

railing, that ought to have been foreseen in the light of the attending circumstances, that was the proximate cause of the injury" (p. 522).

In the recent case of *McCarthy* v. *Palmer*, 113 Fed. (2d) 721, in which the defense of the simple tool doctrine was urged. The facts were briefly: A brakeman was injured while attempting to alight from a caboose when he slipped on a worn burlap rag nailed to the platform for a mat. The caboose was held to be defective, and the simple tool doctrine was not allowed. In rendering its opinion the Appellate Court held:

> "The appellants contend that they are not guilty of any actionable negligence because of the condition of the bag tacked to the platform, on the theory that the so-called simple tool doctrine, exemplified by such decisions as Newbern v. Great Atlantic & Pacific Tea Company, 4 Cir., 68 F. 2d 523, 91 A. L. R. 781, controls. That, however, fails to give adequate effect to the fact that the caboose was one of the cars the appellants were operating and that *its platform was defective because of the presence of the mat in its worn condition. That made the caboose a defective car.* It is true that the removal of the torn bag would have done away with the defect and that that would have been a simple thing to do but the ease with which the car would have been put into suitable condition for use does not alter the fact that it was actually defective due to the negligence of appellants or the fact that such negligence was the proximate cause of the plaintiff's injuries. If it does anything, it emphasizes that negligence." (Italics ours.)

POINT II.

The Circuit Court committed error in failing to follow and abide by the ruling of this Court in Socony-Vacuum v. Smith, 305 U. S. 424.

The Circuit Court stated that petitioner had a choice of tools. It should have under the circumstances reversed the dismissal and ruled as did this Court in *Socony-Vacuum Oil Company, Inc.* v. *Herbert A. Smith, Jr.* (supra), wherein the rule was definitely and clearly enunciated to be:

> "We think that the consistent development of the maritime law in conformity to its traditional policy of affording adequate protection to seamen through an exaction of a high degree of responsibility of owners for the seaworthiness of vessels and the safety of their appliances will be best served by applying the rule of comparative negligence, rather than that of assumption of risk, to the seaman who makes use of a defective appliance knowing that a safe one is available. The power of the trial judge to guide and instruct the jury and his control over excessive verdicts afford as adequate a protection to owners as in any other case where the negligence of the seaman, whatever its degree, has contributed to an actionable injury".

POINT III.

Error was also committed in excluding custom evidence.

The Court having decided that the doctrine of simple tool applied, it excluded custom evidence. This was error. It is well settled that a plaintiff should not be prevented from so doing.

Maibrunn v. *Hamburg American Line*, 77 Fed. (2d) 304;

Standard Oil Co. v. *De Vries*, 3 Fed. (2d) 852.

CONCLUSION.

The Circuit Court and the trial Court in ruling as they did in effect overruled this Court in the rendition of its decisions, and we sincerely believe that the Courts below have decided a question of law in conflict with settled principles of maritime law applicable to seamen, and in holding and applying the "simple tool doctrine" to seamen have committed serious error necessitating a review by this Court, and review by certiorari should, therefore, be allowed.

Respectfully submitted,

SILAS B. AXTELL,
DOMINICK BLASI,
Counsel for Petitioner.